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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,712	06/23/2003	Michael Francis Dube	14150-00601	5751
25243	7590	11/16/2004		
COLLIER SHANNON SCOTT, PLLC 3050 K STREET, NW SUITE 400 WASHINGTON, DC 20007				
			EXAMINER WALLS, DIONNE A	
			ART UNIT 1731	PAPER NUMBER

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/600,712

Applicant(s)

DUBE ET AL.

Examiner

Dionne A. Walls

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-12, 15-29, 31, 32, 35-44 and 46 is/are rejected.
- 7) ☒ Claim(s) 9, 13, 14, 30, 33, 34 and 45 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 2 recites the limitation "the inner central portion". There is insufficient antecedent basis for this limitation in the claim.

4. Claim 6 recites the limitation "said central portion". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by MacAdam et al (US. Pat. No. 6,631,722).

MacAdam discloses all that is recited in the claims (see figures).

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al (US. Pat. No. 6,041,790).

Smith et al discloses all that is recited in the claim (see fig. 6)

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-8, 10-12, 15-29, 31-32, 35-44 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger et al (US. Pat. No. 3,599,646) in view of Marmo et al (US. Pat. No. 4,311,720).

Berger et al discloses nearly all that is recited in the claims, except it may not specifically state that at least one breakable capsule is disposed in the cavity (see entire document). However, Berger et al does state that materials for flavoring smoke may be provided in the cavity (see col. 1, lines 54-58). Further, Marmo et al discloses a means to flavor tobacco smoke comprising gelatin, flavor-filled capsules (which obviously can be considered to be "breakable") that have the claimed characteristics. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to incorporate the flavoring means of Marmo et al into the filter cavity of Berger et al since the flavor capsules of Marmo et al provide for instantaneous evenly distributed flavor release during smoking activity (see col. 4, lines 40-52).

Regarding claims 11-12, 31-32, 42-43, and 46, while Berger et al modified by Marmo et al may not specifically state that a diluting agent is used, with the flavorant, and said agent is a medium chain triglyceride, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide for a diluting agent, in the form of such a triglyceride mixture, since this type of oily substance is capable of readily dissolving hydrophobic flavorants, is excellent in oxidation stability and is easy to handle due to its low viscosity, which would allow for a more homogenous mixture to be used in the flavor-contained gel of the combined references.

Allowable Subject Matter

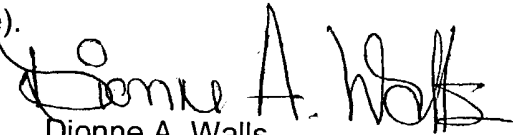
10. Claims 9, 13-14, 30, 33-34, and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Dionne A. Walls
Primary Examiner
Art Unit 1731

November 12, 2004